

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 19 OF 1991

The State of Maharashtra .. Appellant

versus

Maruti G. Deshmukh .. Respondent

...

Mr.D.P. Adsule, APP for the State.

Mr.Abhijit Kadam i/b G.V. Limaye for the respondent.

CORAM : V.M. KANADE, J

DATED : 24th November 2004.

ORAL ORDER:-

1. Heard the learned APP appearing on behalf of the State and the learned counsel appearing on behalf of the respondent.

2. The State is challenging the judgement and

order passed by the Special Judge, Raigad in Special Criminal case no.12 of 1989. By the said judgement and order dated 1st November 1990, the trial Court acquitted the accused of the offence punishable u/s.408 of the IPC and sec.3 and 7 of the Essential Commodities Act. The prosecution case in brief is that the accused was running a fair price shop at village Kamrala. On 21.2.1989, the District Supply Officer inspected and physically checked the stock of the essential commodities in the shop in the presence of customers and on physical verification, he found that there was a shortage of four rice bags and 10 bags of wheat and there was discrepancy between the figures which were shown in the stock register and the actual stock was found in the shop. No evidence is adduced by the prosecution to prove the commission of offence u/s.408 of the IPC to show that there was a misappropriation of 4 bags of rice and 10 bags of wheat. In order to prove the offence under the Essential Commodities Act, the prosecution examined five witnesses. The accused gave an explanation that the goods were not presented at the time when the inspection had taken place. From the perusal of evidence of Investigating Officer PW no.5 PSI Mulla, it can be seen that in the cross-examination, he has

admitted that when he again inspected the shop on 23rd February 1989. He found that the four quintals of rice, 10 quintals of wheat were short in the shop. The trial Court has given the benefit of doubt to the accused and has come to the conclusion that the prosecution had not proved the commission of offence u/s.7 r/w sec.3 of the Essential Commodities Act.

3. In my view, there is no reason to interfere with the said order passed by the Special Judge, Alibag and the view taken by the Special Judge is a possible view. Apart from that, I do not see any reason to interfere with the said order after a lapse of almost 14 years.

4. Appeal is dismissed.

V.M. KANADE, J